

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

STATE OF TENNESSEE,
Plaintiff,

v.

BRAD GAINES, d/b/a
Gaines Fitness Center,

Respondent

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through the Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1), 47-18-114, 47-18-302 and 47-18-320 at the request of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance ("Division"). The Division has reason to believe that the Defendant named herein has violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, and that this action is in the public interest.

I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provision of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County because it is a county in which Defendant conducts or has conducted business. See Tenn. Code Ann. § 47-18-108(a)(3). Defendant has been provided with the ten (10) days notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2).

II. PARTIES

2. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1) and 47-18-114, this action is commenced in the name

of the State of Tennessee, by the Attorney General, at the request of the Division. (See Exhibit 1, Affidavit and Verification of Mark Williams, Director of the Division of Consumer Affairs).

3. Defendant's principal place of business is 3441 Lebanon Pike Road, Hermitage, TN 37076.

III. FACTUAL ALLEGATIONS

4. For a time period unknown to the Plaintiff, Defendant has been and is operating a health club as defined by Tenn. Code Ann. § 47-18-301(3).

5. The operation of a health club by the Defendant, as alleged herein, constitutes "trade", "commerce" and/or a "consumer transaction" and the offering of or providing of "goods" and/or "services" as defined in Tenn. Code Ann. §§ 47-18-103(5), (8) & (9).

6. Until May 4, 1995, Defendant was operating a health club without a valid certificate of registration from the Division.

8. Under Tenn. Code Ann. § 47-18-303(2), any health club agreements entered into while Defendant was unregistered are unenforceable against the buyer.

IV. VIOLATIONS OF THE LAW

9. By operating a health club without a valid certificate of registration, and without paying the required registration fee, Defendant violated Tenn. Code Ann. § 47-18-302(a). Under Tenn. Code Ann. § 47-18-320, this violation constitutes an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act.

10. By operating a health club without a valid certificate of registration, Defendant caused a likelihood of confusion as to the approval and certification of its goods and services in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(2), (b)(3), & b(27).

11. By representing or implying that any health club agreements entered into by Defendant while Defendant was not registered are enforceable against the buyer, Defendant has represented that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(12), & (b)(27).

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

(1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-

108, and 47-18-116.

(2) That process issue and be served upon Defendant requiring it to appear and answer this Complaint.

(3) That this Court adjudge and decree that Defendant has engaged in the aforesaid acts or practices, which are violative of the Tennessee Consumer Protection Act.

(4) That this Court enjoin Defendant from engaging in the aforesaid acts or practices, which are violative of the Tennessee Consumer Protection Act.

(5) That this Court adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorneys' fees, as provided by Tenn. Code Ann. § 47-18-108(b).

(6) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses suffered by reason of the alleged violations of the Tennessee Consumer Protection Act, including but not limited to requiring that Defendant notify each and every consumer that entered into a health club agreement with Defendant while Defendant was not registered that the agreement is unenforceable against the consumer and the consumer is entitled to a refund less that portion of the total price which represents actual use of the facilities and less the cost of goods and services consumed by the consumer as provided in Tenn. Code Ann. § 47-18-303.

(7) That this Court adjudge and decree that the Defendant pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b).

(8) That all costs in this cause be taxed against Defendant.

(9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.